

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GARY TAYLOR, ) No. CV14-3153-SJO (AS)  
Petitioner, )  
v. )  
ORDER DISMISSING ACTION FOR  
RON DAVIS, Warden, ) LACK OF SUBJECT MATTER  
Respondent. ) JURISDICTION  
)  
)

I.

## INTRODUCTION

On April 24, 2014, Petitioner Gary Taylor ("Petitioner"), a California state prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus by a Person in State Custody, pursuant to 28 U.S.C. § 2254 (Docket Entry No. 1). On June 17, 2014, the Court issued an Order To Show Cause ("OSC") that required Petitioner to file a Supplemental Statement explaining why the action should not be dismissed for lack of subject matter jurisdiction (Docket Entry No. 10). On July 8, 2014, Petitioner filed a Supplemental Statement (Docket Entry No. 11). After reviewing the Petition and the

1 Supplemental Statement, the Court has decided to DISMISS the action  
2 without prejudice for lack of subject matter jurisdiction.

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4 **II.**

5 **BACKGROUND**

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7 On March 23, 2009, Petitioner pleaded guilty to one count of  
8 continuous sexual abuse, in violation of California Penal Code  
9 ("P.C.") § 288.5(a), and three counts of committing a lewd act upon a  
10 child, in violation of P.C. § 288(a). (See Lodgment 1, at 1.) On  
11 May 1, 2009, the Ventura County Superior Court sentenced Petitioner  
12 to twenty-two years in state prison. (See id.) The court also  
13 ordered Petitioner to pay \$158,760 in restitution, which would be  
14 allocated accordingly: (1) \$90,720 was to be paid to Hannah T. (one  
15 of Petitioner's victims), and (2) \$68,040 was to be paid to Terri  
16 Taylor (Hannah T.'s mother and Petitioner's ex-wife).<sup>1</sup> (See id. at  
17 2; Pet. 11.) Petitioner did not appeal the trial court's judgment.<sup>2</sup>

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19 On May 18, 2012, Petitioner filed a state habeas petition in the  
20 California Court of Appeal, (see Lodgment 2), which was denied on  
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23 <sup>1</sup> The trial court imposed other financial obligations upon  
24 Petitioner. (See Lodgment 1, at 2.) The Petition does not appear to  
challenge these obligations. (See Pet. 1-27.)

25 <sup>2</sup> The Court takes judicial notice of state court records that  
26 are available on the California Courts' website at  
27 <http://appellatecases.courtinfo.ca.gov> (last visited Sept. 8, 2014).  
28 The website shows no record of any direct appeals of the trial court's judgment.

1 July 9, 2012.<sup>3</sup> (See Lodgment 4.) On May 24, 2013, Petitioner filed  
2 another petition in the California Court of Appeal, (see Lodgment 5),  
3 which was denied on June 18, 2013. (See Lodgment 6.) On July 30,  
4 2013, Petitioner filed a state habeas petition in the California  
5 Supreme Court, (see Lodgment 7), which was denied on October 16,  
6 2013. (See Lodgment 8.)

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8 On April 24, 2014, Petitioner filed the instant Petition.  
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10 **III.**

11 **PETITIONER'S CONTENTIONS**

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13 The Petition raises three grounds for habeas relief:  
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15 1. Ground One: The trial court's imposition of \$158,760 in  
16 restitution violates the Cruel and Unusual Punishments  
17 Clause of the Eighth Amendment.  
18 2. Ground Two: The restitution order violates the Due  
19 Process Clause of the Fourteenth Amendment<sup>4</sup> because it is  
20 "arbitrary and capricious[.]"

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23 <sup>3</sup> The California Courts' website provides the date on which the  
24 California Court of Appeal rejected this petition.

25 <sup>4</sup> Although Petitioner actually cites the Fifth Amendment in  
26 support of this claim, (see Pet. 7-8), the Fourteenth Amendment would  
27 likely govern this ground for habeas relief. Compare U.S. CONST.  
28 amend. V ("No person shall . . . be deprived of life, liberty, or  
property, without due process of law[.]"), with U.S. CONST. amend.  
XIV, § 1 (emphasis added) ("No State shall . . . deprive any person  
of life, liberty, or property, without due process of law[.]").

1           3. Ground Three: Petitioner's counsel rendered ineffective  
2           assistance by failing to raise certain objections at the  
3           restitution hearing.

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5 (See Pet. 7-8, 11-27.)

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7           **IV.**

8           **DISCUSSION**

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10          Title 28 U.S.C. § 2254(a) provides that:

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12          The Supreme Court, a Justice thereof, a circuit judge, or a  
13          district court shall entertain an application for a writ of  
14          habeas corpus in behalf of a person in custody pursuant to  
15          the judgment of a State court *only on the ground that he is*  
16          *in custody in violation of the Constitution or laws or*  
17          *treaties of the United States.*

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19          28 U.S.C. § 2254(a) (emphasis added).

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21          The requirement that a habeas petitioner be "in custody in  
22          violation of [federal law]" is "jurisdictional." See Bailey v. Hill,  
23          599 F.3d 976, 978 (9th Cir. 2010); cf. Williamson v. Gregoire, 151  
24          F.3d 1180, 1182 (9th Cir. 1998) (noting that 28 U.S.C. § 2241(c)(3)'s  
25          requirement that a habeas petitioner be "in custody in violation of  
26          the Constitution or laws or treaties of the United States" is  
27          jurisdictional). "The plain meaning of the text of § 2254(a) makes  
28          clear that physical custody alone is insufficient to confer  
                jurisdiction." See Bailey, 599 F.3d at 980. Rather, "[it]  
                explicitly requires a nexus between the petitioner's claim and the

1 unlawful nature of the custody." See id. (emphasis added) (citing  
 2 Dickerson v. United States, 530 U.S. 428, 439 n.3 (2000).) If the  
 3 remedy sought is merely "the elimination or alteration" of a  
 4 petitioner's restitutive obligation, then there is no such nexus  
 5 between the habeas claim and the petitioner's purportedly unlawful  
 6 custody. See id. at 981; see also Washington v. Smith, 564 F.3d  
 7 1350, 1350-51 (7th Cir. 2009) (holding that a petitioner did not  
 8 satisfy the "in custody" requirement because, even if he prevailed on  
 9 his ineffective assistance claim, "the only possible benefit [would]  
 10 be a lower payment to his victim"), quoted with approval in Bailey,  
 11 599 F.3d at 981-82. In such a case, the action must be dismissed for  
 12 lack of subject matter jurisdiction. See Bailey, 599 F.3d at 984.

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 14 Here, Petitioner's cruel and unusual punishment, due process, and  
 15 ineffective assistance of trial counsel claims each challenge *only*  
 16 the \$158,760 restitution order. (See Pet. 7-8, 11-27.) Nonetheless,  
 17 Petitioner claims that he is not directly contesting the imposition  
 18 of restitution, but is merely attacking "the trial court['s] abuse of  
 19 authority and the prosecutor['s] misconduct[,]"<sup>5</sup> which stem from  
 20 their failure "to accept that [P]etitioner has already paid the  
 21 imposed restitution." (See Supplemental Statement 3.) Petitioner  
 22 also claims that his attorney rendered constitutionally deficient  
 23 assistance by failing to argue to the trial court that Petitioner  
 24 previously satisfied that financial obligation. (See id. at 4.)  
 25 However, even if Petitioner prevailed on these claims, he would *not*  
 26 obtain early release from custody; instead, he would be entitled to  
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28 <sup>5</sup> Petitioner did not explicitly raise a prosecutorial misconduct  
 claim in the instant Petition. (See Pet. 1-27.)

1 only "the elimination or alteration of a money judgment" (and perhaps  
 2 the return of funds already paid). See Bailey, 599 F.3d at 981.  
 3 Thus, the "nexus" between these claims and illegal custody is  
 4 lacking. See id. Put differently, the legal theories on which his  
 5 claims rely are irrelevant – the only relevant consideration is  
 6 whether his claims would impair the validity of the custodial  
 7 sentence. See id. at 978, 984 (affirming dismissal of ineffective  
 8 assistance claim for lack of subject matter jurisdiction);  
 9 Washington, 564 F.3d at 1351. Because these claims do not affect the  
 10 legality of Petitioner's confinement, this Court lacks subject matter  
 11 jurisdiction over the action.<sup>6</sup> See Bailey, 599 F.3d at 984.

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21 <sup>6</sup> Petitioner also cites California law in support of his request  
 22 for habeas relief. (See Pet. 12-17, 22-24.) Because all of these  
 23 apparent state law claims challenge only the restitution order, they  
 24 too fail to satisfy the "in custody" requirement. (See, e.g., id. at  
 25 12 ("[A]s PC 1202.4 directs, future restitution should not be  
 26 determined before hand [sic] but rather the court retains  
 27 jurisdiction over restitution issues which allows the victim to come  
 28 back to the court and prove further costs/losses that are tied to the  
 defendant's criminal conduct.").) Furthermore, even if the Court  
 otherwise had jurisdiction over these claims, they would not be  
cognizable on habeas review. See Estelle v. McGuire, 502 U.S. 62,  
 67-68 (1991) (quoting Lewis v. Jeffers, 497 U.S. 764, 780 (1990))  
 (internal quotation marks omitted) ("[F]ederal habeas corpus relief  
 does not lie for errors of state law.").

1 v.  
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4 **ORDER**  
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8 IT IS ORDERED that: (1) the Petition is DENIED, and (2) the  
9 action is DISMISSED without prejudice.  
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12 Dated: September 9, 2014  
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18 S. JAMES OTERO  
19 UNITED STATES DISTRICT JUDGE  
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